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INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

Dated as of February *18*, 1976

Between

SEATTLE-FIRST NATIONAL BANK,

Lessor,

and

SSI RAIL CORP.,

Lessee.

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EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT, is made as of this 18<sup>th</sup> day of February, 1976, between SEATTLE-FIRST NATIONAL BANK, a national banking association (hereinafter the "Lessor") and SSI RAIL CORP., a Delaware corporation (hereinafter the "Lessee").

W I T N E S S E T H:

WHEREAS, the Lessee has entered into a Purchase Order (hereinafter the "Purchase Order") in the form of Exhibit B to the Assignment, as hereinafter defined, with FMC CORPORATION, a duly organized corporation (hereinafter the "Constructor"), providing for the construction by Constructor and the purchase by Lessee of 100 70-Ton, 50'-6", single sheath railroad boxcars (hereinafter collectively called "the Boxcars"); and

WHEREAS, Lessor and Lessee have entered into a Purchase Order Assignment of even date herewith (hereinafter the "Assignment") which assigns to Lessor certain of Lessee's rights under the Purchase Order; and

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee the Boxcars pursuant to the terms and conditions of this Equipment Lease Agreement (hereinafter the "Lease"); and

WHEREAS, Lessee is a wholly owned subsidiary of ITEL Corporation (hereinafter the "Guarantor"), a Delaware corporation, and Guarantor has agreed to guaranty Lessee's obligations under this

Lease, the Purchase Order, and Assignment, and certain other documents pursuant to the terms and conditions of a Guaranty of even date herewith (hereinafter the "Guaranty") executed by Guarantor;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Lessor and Lessee hereby agree as follows:

1. Request to Purchase.

Lessee requests Lessor to purchase from the Constructor and Lessor agrees, subject to the provisions of Paragraph 2 of this Lease, to purchase the Boxcars from Constructor pursuant to the Purchase Order and Assignment.

2. Purchase Conditions.

2.1 Conditions Precedent. Lessor's obligation to order or purchase any Boxcars, or make any payment therefor, is subject to the following conditions precedent to be complied with to the satisfaction of Lessor on or prior to delivery and acceptance of such Boxcar or Boxcars pursuant to Paragraph 3 hereof:

(a) No change shall have occurred after the date of this Lease in applicable law or regulations thereunder or administrative interpretations thereof which would make it illegal for Lessor to make such a purchase.

(b) There shall exist no Event of Default, or event which, with notice, or lapse of time, or both, would constitute an Event of Default under this Lease.

(c) The following documents shall have been duly authorized, executed, and delivered by the respective party

or parties thereto and shall be in full force and effect on the date of delivery and acceptance of each Boxcar:

- (i) The Lease;
- (ii) The Guaranty;
- (iii) The Purchase Order;
- (iv) The Assignment;
- (v) A full Warranty Bill of Sale executed by

Constructor in form and substance satisfactory to Lessor and its counsel and covering each Boxcar to be paid for hereunder;

(vi) The consent of Constructor to the Assignment, such consent to be in form and substance satisfactory to Lessor and its counsel.

(d) The Lessor shall have received a Certificate of Cost executed by Lessee, in form and substance satisfactory to Lessor, setting forth with reasonable specificity the amount Lessor is to pay Constructor for the Boxcars being delivered (with said Certificate of Cost to be supplemented by invoices signed by the Constructor at the time request for payments are made, which invoices shall be in an amount equal to the amount set forth by Lessee in the Certificate of Cost except for variations resulting from adjustments in freight rates to points of delivery).

(e) Lessor shall have received favorable opinions from counsel for both Lessee and Guarantor, satisfactory in scope and substance to Lessor and its counsel, as to the corporate authority of Lessee to enter into the Lease, Purchase Order and Assignment and of Guarantor to enter into the Guaranty, and as to such other matters as Lessor or its counsel may request.

(f) The Lessor shall have received appropriate certificates or other evidence of insurance as required by

Paragraph 10 hereof.

(g) Lessor shall have received in form and substance satisfactory to the Lessor and its counsel: a copy of resolutions of the Board of Directors of the Lessee, certified by the secretary or an assistant secretary of the Lessee, duly authorizing the lease by the Lessee of the Boxcars under this Lease and the execution, delivery and performance by the Lessee of this Lease, the Purchase Order and the Assignment, together with an incumbency certificate as to the person or persons authorized to execute and deliver said documents and their respective signatures.

(h) Lessor shall have received in form and substance satisfactory to Lessor and its counsel: a copy of the resolutions of the Board of Directors of the Guarantor certified by the secretary or an assistant secretary of the Guarantor, duly authorizing the guaranty by the Guarantor of this Lease and the execution, delivery and performance by the Guarantor of the Guaranty and all other documents necessary, together with an incumbency certificate as to the person or persons authorized to execute and deliver said documents and their respective signatures.

(i) Lessee, at its own expense, shall have caused the Lease (a) to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act, 49 U.S.C. § 20c, and (b) to be duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of

the Railway Act of Canada, with notice of such deposit having been published in the Canada Gazette (or provision having been made therefor) in accordance with said Section 86.

(j) The aggregate purchase price of all Boxcars delivered on or prior to the date of such delivery and acceptance shall not exceed \$3,000,000.

(k) Lessor shall have received such other documents and evidence with respect to the transaction as Lessor or its counsel may reasonably request in order to establish the consummation of the transactions contemplated by this Lease, the Purchase Order, and the Assignment, and the taking of all corporate actions in connection therewith.

2.2 Failure of Conditions Precedent. In the event the conditions precedent contained in this Paragraph 2 are not satisfied and, therefore, Lessor is not obligated to accept delivery of or make payment for any Boxcar, the Lessor shall transfer to Lessee, and Lessee hereby agrees to accept, all Lessor's obligation to purchase said Boxcar under this Lease, the Purchase Order, and the Assignment, and Lessee shall assume all such obligations and liabilities and will hold Lessor harmless from and against any and all liabilities arising in connection with the Boxcars, including without limitation, obligations arising in connection with the purchase, lease, or use of such Boxcar under this Lease, the Purchase Order, and the Assignment.



3. Acquisition and Delivery of Equipment.

3.1 Inspection and Acceptance. Lessor hereby appoints Lessee as its agent for the inspection and acceptance of all Boxcars, and the approval of all invoices relating to the Boxcars, pursuant to the Purchase Order and the Assignment. Upon tender of delivery by Constructor, Lessee will inspect and test each Boxcar and, if the Boxcar meets Lessee's specifications, Lessee will accept delivery thereof and, immediately thereafter, shall notify Lessor in writing of the date of such acceptance. Upon such acceptance, such Boxcar shall thereafter be subject to all the terms and conditions of this Lease.

3.2 Effect of Acceptance. Lessee's written notification to Lessor of acceptance of any Boxcar shall constitute Lessee's request, as set forth in Paragraph 1 hereof, that Lessor pay the Constructor the invoice cost of such Boxcar and shall conclusively establish as between Lessor and Lessee (but without prejudice to rights either of them may have against any third party) that such Boxcar is acceptable to and accepted by Lessee (notwithstanding any defect with respect to design, manufacture, condition or in any other respect), that such Boxcar is personal property in good order and condition and conforms to the specifications of the Purchase Order and the Assignment, and that, as to each Boxcar accepted, the representations, warranties, and covenants set forth in Paragraphs 16(k), 16(l), and 16(m) of this Lease are true and correct.

4. Lease Term.

4.1 Interim Term. The Interim Term of this Lease shall commence as to each Boxcar upon Lessee's acceptance of that Boxcar from the Constructor as provided in Paragraph 3.1 above, and shall terminate on the earlier of (i) <sup>a date</sup> ~~the date of Lessee's~~ <sup>mutually agreed upon by Lessor and Lessee</sup> ~~acceptance of the last Boxcar delivered pursuant to the Purchase Order and the Assignment~~ or (ii) June 30, 1976. Any Boxcar not delivered and accepted by the Lessee under this Lease, the Purchase Order, and the Assignment and paid for by Lessor on or prior to June 30, 1976, shall be excluded herefrom, and Lessor shall have no obligation to purchase such Boxcar pursuant to the Purchase Order and Assignment or lease the same to Lessee pursuant to this Lease. In such event and as to all such Boxcars not purchased and leased, Lessee hereby agrees to accept all Lessor's obligations to purchase said Boxcars under this Lease, the Purchase Order and the Assignment, and Lessee shall assume all such obligations and liabilities and will hold Lessor harmless from and against any and all liabilities arising in connection with the purchase or lease of said Boxcars under this Lease, the Purchase Order, and the Assignment.

4.2 Full Term. The Full Term of this Lease shall commence on the day next succeeding the termination date of the Interim Term and shall terminate on the day which is fifteen (15) years after the date the Full Term commences, unless earlier terminated pursuant to this Lease.

5. Purchase and Hold Harmless Agreement.

If for any reason Lessee does not accept any Boxcar on or before June 30, 1976, such Boxcar shall be excluded from this Lease, and Lessee shall purchase any right, title, or interest of Lessor in such Boxcar for a purchase price equal to all amounts paid or incurred by Lessor in connection with the purchase of such Boxcar pursuant to the Purchase Order and Assignment.

Whether or not Lessee accepts any Boxcar, Lessee agrees to indemnify and hold Lessor harmless from all loss, injury, expense or damage, including all legal fees and costs, which Lessor may incur or suffer in connection with such Boxcar prior to Lessee's acceptance thereof.

6. Rent.

6.1 Rent for Boxcars. Lessee will pay Lessor for each Boxcar:

(a) Interim Rent payable in arrears at four times the lease rate factor divided by 365 on the daily outstanding principal balance of the aggregate purchase price paid by Lessor for the Boxcars, or other costs expended by Lessor properly payable by Lessee pursuant to Paragraph 21.6 hereof for the period beginning when Lessor pays the purchase price or cost or any portion thereof for any Boxcar and ending on the last day of the Interim Term. Accrued Interim Rent shall be paid on the last day of the Interim Term.

(b) Periodic Rent payable in arrears in sixty (60) equal installments commencing on the day which is three

(3) months after the first day of the Full Term, and quarterly thereafter, with each such installment to be in an amount equal to 2.8594% of Lessor's Cost; provided, however, that the last installment of Periodic Rent due for the Full Term of this Lease shall be payable on the last day of the last month of the Full Term of this Lease. Lessor's Cost for each Boxcar shall be defined as the sum of the invoice purchase price of each Boxcar paid by Lessor to the Constructor, any other costs or expenses incurred by Lessor with respect to that Boxcar, and all other applicable costs, including expenses properly payable by Lessee pursuant to Paragraph 21.6 hereof, attributable on a proportional basis to that Boxcar, unless otherwise reimbursed to Lessor. Before the due date of the first installment of Periodic Rent, Lessor will furnish Lessee a schedule showing the amounts and due dates of Periodic Rent determined as aforesaid.

If date on which Rent is due under this Paragraph is not a day during which Lessor is regularly open for business, such Rent payment shall be due on the next preceding day on which Lessor is open for business.

6.2 Place of Payment. All payments to Lessor shall be made at Lessor's office in Seattle, Washington, or at such other place as Lessor may designate in writing.

6.3 Additional Sums Payable by Lessee. In addition to the Rent payable under Paragraph 6.1:

(a) Taxes. Lessee agrees to pay all taxes, assessments and other governmental charges of whatever kind or character and by whomever payable on or relating to each Boxcar and on the sale, licensing, registration, ownership, use, shipment, transportation, delivery, or operation thereof, or the exercise of any option, election, or performance of any obligation by Lessee hereunder, which may be accrued, levied, assessed or imposed during the Lease Term or which remain unpaid as of the date of delivery to and acceptance by Lessee of such Boxcar, and all taxes of any kind imposed by any federal, state or local taxing authority or foreign government against Lessor on or measured by any amount payable hereunder, except taxes on net income imposed by the United States or the state of Washington or local taxing authority of the State of Washington. Lessor will promptly forward to Lessee all notices, assessments, or other information received pertaining to Lessee's obligations under this Paragraph. Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars and, if any tax is to be assessed or billed to Lessor, Lessee will cause such billings to be made to Lessor in care of Lessee. Lessee will, upon written request of Lessor, submit written evidence of the payment of all obligations mentioned in this Paragraph. Except for amounts to be paid to Lessor to reimburse it for payments made by Lessor which are the obligation of Lessee hereunder, Lessee

shall not be obligated to pay any amount under this Paragraph so long as it shall in good faith and by appropriate proceedings contest the validity or the amount thereof, unless such contest would adversely affect the title of Lessor to any Boxcar or would subject any Boxcar to forfeiture or sale. Lessee agrees to indemnify Lessor against any loss, claim, demand, and expense, including legal expense, resulting from such nonpayment or contest.

In the event Lessor elects or is required to and does make any payment under this Paragraph, Lessee shall pay the Lessor an amount which, after taking into account all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States, a state or local government taxing authority, or a foreign government (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expenses indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The sum payable pursuant to this Paragraph shall be payable thirty (30) days after Lessor delivers to Lessee reasonable written verification to Lessee that indemnity is due Lessor pursuant to this Paragraph including without limitation, a statement describing in reasonable detail the circumstances requiring indemnification hereunder, and setting forth in reasonable detail the computation of the amount thereof.

(b) Maintenance, Servicing and Assignment of Warranty. Lessee will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Boxcar during the Lease Term, including but not limited to repairs, maintenance, storage and servicing. Lessor hereby transfers and assigns to Lessee for and during the Lease Term all of its right, title and interest in, under and to any warranty, whether express or implied, with respect to each Boxcar, to the extent the same is assignable and for so long as no Event of Default has occurred and is continuing. All claims or actions on any warranty so assigned shall be made and prosecuted by Lessee at its sole expense, and Lessor shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable jointly to Lessee and Lessor. Proceeds from such recovery shall be used to repair or replace the Boxcar for which such warranty claim was made. No warranty or any defect on or in any Boxcar accepted by Lessee or any claim made thereon shall in any way relieve Lessee of its obligations under Paragraphs 12 and 15.3 below.

6.4 Net Lease. This Lease is a net Lease, and Lessee shall not be entitled to any abatement of rent or reduction thereof including, but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor or

against the Constructor. Except as otherwise expressly provided herein, this Lease shall not terminate and the respective obligations of Lessor or Lessee shall not be otherwise affected by reason of: (a) any defect in or failure of title of Lessor to the Boxcars; (b) any defect in or damage to or loss or destruction of all or any of the Boxcars from whatever cause; (c) the taking or requisition of the Boxcars by condemnation or otherwise; (d) the lawful prohibition by Lessor of Lessee's use of the Boxcars; (e) the interference with such use by any person other than Lessor; (f) the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease; or (g) for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the Rents and other amounts payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Paragraph 14.2 hereof or until the Boxcars are surrendered pursuant to Paragraph 15 hereof.

7. Ownership and Marking of the Boxcars.

7.1 Duty to Mark. Lessee acknowledges and agrees that it has not and, by execution and performance hereof, it will not have or obtain any title to or any other interest in the Boxcars except solely as Lessee hereunder and subject to all the terms hereof. Lessee agrees that on or before its delivery Lessee will cause each Boxcar to be plainly, permanently and conspicuously



marked by stenciling or by a metal tag or plate or decal affixed thereto with the following legend:

Property of and Leased from Seattle-First  
National Bank Subject to an Agreement Filed  
Under the Interstate Commerce Act, Section  
20c.

Lessee agrees to replace any such marking which may be removed or destroyed or become illegible and to keep the Boxcars free from any markings or labelings which might be interpreted as a claim of ownership thereof by Lessee or by any other person except Lessor or its assigns; provided, however, that the Boxcars may be lettered with the names, initials, reporting marks, or other insignia customarily used by the Lessee, its affiliates, customers, or sublessees.

7.2 Personal Property. It is expressly understood that the Boxcars may not be attached or affixed to realty without Lessor's prior written consent, and in any event the Boxcars shall remain personal property notwithstanding the manner in which it may be attached or affixed to realty. Upon termination of the Lease Term, Lessee shall have the duty and Lessor the right at the sole cost and expense of Lessee to remove the Boxcars from the premises whereon the same are located, whether or not affixed or attached to the realty or any building, and Lessor shall not be liable for any damage caused to the realty or any building by the removal of the Boxcars. Lessee agrees to indemnify Lessor against any loss, claim, demand or expense, including legal expense, resulting from such removal.

8. Disclaimer of Warranties.

Lessee acknowledges and agrees (a) that the Boxcars are of a size, design, capacity and manufacture selected by Lessee; (b) that Lessor is not a manufacturer or a dealer in property of such kind; and (c) AS BETWEEN LESSOR AND LESSEE, LESSEE LEASES THE BOXCARS IN "AS IS" CONDITION AND LESSOR MAKES NO REPRESENTATION OR WARRANTY OR COVENANT WITH RESPECT TO FITNESS, MERCHANTABILITY, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE BOXCARS IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PARTICULAR PURPOSES OR USES OF LESSEE OR AS TO LESSOR'S TITLE THERETO OR LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OR OMISSIONS OF LESSOR NOT CONTEMPLATED BY THIS LEASE) OR ANY OTHER REPRESENTATION OR WARRANTY OR COVENANT OF ANY KIND OR CHARACTER EXPRESS OR IMPLIED WITH RESPECT THERETO.

9. Lessee's Indemnities.

9.1 General Indemnities. Lessee will defend, indemnify and hold Lessor harmless from and against (a) any and all loss or damage of or to the Boxcars, usual wear and tear excepted; and (b) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) to which Lessor or Lessee may be subject or which may be incurred in any manner by or for the account of Lessor or Lessee (i) relating to the Boxcars, or any part thereof, including without limitation the construction, purchase, delivery, acceptance or rejection, installation, ownership, sale, leasing or return of the Boxcars, or as a result of the use, maintenance, repair, replacement, operation

or the condition thereof (whether defects, if any, are latent or are discoverable by Lessor or Lessee); (ii) by reason or as a result of any act or omission of Lessee for itself or as agent or attorney-in-fact for Lessor hereunder; (iii) as a result of claims for patent infringement; or (iv) as a result of claims for strict liability in tort. If either party hereto shall have knowledge of any claim or liability hereby indemnified against, it shall give prompt written notice thereof to the other party.

9.2 Tax Indemnities. If the Lessor shall (except as herein below provided) fail to have the right to claim or shall lose the right to claim or shall suffer a disallowance of or shall be required to recapture or shall be disallowed the full use of (a) the investment tax credit now allowed by Section 38 of the Internal Revenue Code of 1954, as amended (the "Code"), for "new Section 38 property" with respect to not less than 100% of Lessor's Cost of the Boxcars accepted by Lessee, or (b) a depreciation or amortization deduction with respect to Lessor's Cost of any Boxcar, in computing its taxable income for the period this Lease is in effect (utilizing for the full amount of such Lessor's Cost an ADR depreciation life of 12 years and the asset depreciation range system now provided by Treas. Regs. Section 1.167(a) and computed in accordance with any of the methods of depreciation now provided by Section 167(b) of the Code), except for any inability to obtain or to have the right to claim such investment tax credit or depreciation or amortization deduction because of the occurrence of any of the following events:

(a) A Casualty Occurrence (as defined in Paragraph 13) shall occur with respect to such Boxcar, whereby Lessee is required by the terms hereof to pay, and shall pay in full, the Stipulated Loss Value determined pursuant to Paragraph 13 hereof; provided, however, that the indemnities set forth in this Paragraph shall continue in effect, notwithstanding such payment of Stipulated Loss Value, with respect to the period prior to the date of payment of said Stipulated Loss Value;

(b) At any time while such Boxcar is leased hereunder, and while no Event of Default under Paragraph 14 hereof has occurred and is continuing unremedied (without the written consent of Lessee), Lessor shall voluntarily or (except in a case constituting a Casualty Occurrence as defined in Paragraph 13 hereof) involuntarily transfer legal title to such Boxcar to anyone or shall dispose of any interest in the Boxcar or shall reduce its interest in the profits from the Boxcar, and such transfer, disposal or reduction by the Lessor shall be the cause of the Lessor's inability to obtain or to have the right to claim or of the disallowance of such investment tax credit or depreciation or amortization deduction;

(c) Lessor shall fail to claim such investment tax credit or such depreciation or amortization deduction in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such credit

or deduction, and such failure to claim or to follow such procedure, as the case may be, shall preclude the Lessor from claiming such credit or depreciation or amortization deduction;

(d) The Lessor shall fail to have sufficient income to benefit from such investment tax credit or depreciation or amortization deduction;

(e) After a timely written request to conduct such contest has been given by Lessee to Lessor, the Lessor (i) shall fail to take timely action in contesting the claim made by the Internal Revenue Service with respect to the disallowance of such investment tax credit or such depreciation or amortization deduction, and failure to take such action in a timely manner shall preclude the right of Lessor to contest such claim, or (ii) shall fail to take action to contest any such claim; or Lessor shall, without the prior written consent of Lessee, release, waive, compromise or settle any action or proceeding taken in accordance with this Subparagraph (e); provided, however that Lessor's responsibility to take or refrain from taking any action pursuant to this subparagraph (e) as a precondition to the payment of any indemnity provided by this section is expressly subject to the Lessee's agreement to indemnify Lessor from any loss, harm or liability arising as a result of the taking or refraining from taking of only such action and to Lessee's agreement to pay all of Lessor's costs and expenses,

including legal expenses, resulting from taking or refraining from taking any such action; or

(f) Any other act solely of Lessor which directly causes the loss of any of the aforesaid tax benefits, provided, however, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such tax benefit under this subparagraph (f);

then Lessee shall pay Lessor as Supplemental Rent an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of the United States or any state, city or other political subdivision thereof or any foreign government (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of any other such taxes), in the reasonable opinion of the Lessor, will cause the net after-tax return on the Lessor's investment in the Boxcars to be equal to the net after-tax return on such investment which the Lessor would have realized had the Lessor had the full tax benefit of all investment tax credit and all depreciation or amortization deductions described in this Paragraph (after taking into account the amount of any interest or penalties which may be assessed against Lessor in connection with the failure to obtain or have the right to claim, or the disallowance of, such investment tax

credit or such depreciation or amortization deduction). The intent of this indemnity is to provide Lessor the same after-tax rate of return as if no such tax benefits had been lost or disallowed. Supplemental Rent shall be payable concurrently with other Rent required under this Lease and shall commence on the Rent payment date next succeeding the disallowance of the Lessor's right to claim or to have the benefit of the investment tax credit or depreciation or amortization deductions contemplated by this Paragraph. In the event any Supplemental Rent is required to be paid pursuant to this Paragraph, the Stipulated Loss Value schedule attached hereto as Exhibit A shall be revised as necessary to preserve the net after-tax return on the Lessor's investment in the Boxcars as provided herein above.

10. Insurance.

The Lessee will, at all times while this Lease is in effect and at its own expense, cause insurance to be carried and maintained with respect to all Boxcars accepted, from the date of such acceptance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and against comparable risks insured against by Lessee on equipment owned by it, and in any event against the following risks and in the following amounts: public liability (including, without limitation, bodily injury) and property damage each in the amount of not less than \$5,000,000 with Lessor described as an additional insured on the policy or policies covering such risks, and "All Risk" physical damage coverage in an amount not less than Lessor's Cost

of the maximum number of Boxcars which, as determined by Lessee, can reasonably be expected to be at risk in any particular location at any given time, but shall in no event provide for coverage of less than \$300,000 per occurrence on all Boxcars accepted by Lessee with the Lessor named as the "Loss Payee" on the policy or policies covering such risk. All such insurance shall be in the form and with companies approved by Lessor and shall provide that it may not be altered or cancelled without thirty (30) days prior written notice to Lessor of the insurer's intent to so cancel. Proceeds of all insurance shall be payable first to Lessor to the extent of its liability or interest, as the case may be. Lessee will furnish from time to time such evidence of insurability and existing insurance coverage as Lessor may request, and without limiting the generality of the foregoing, Lessee will furnish Lessor, prior to any disbursements by Lessor for the purchase of Boxcars hereunder, and thereafter at intervals of not more than twelve (12) calendar months, a detailed report signed by an independent insurance broker with respect to the insurance carried on the Boxcars together with the opinion of such broker as to its compliance with the provisions of this Paragraph 10.

11. Use.

So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Lease, and may sublease the Boxcars to others, provided, however, that the rights of any such sublessee shall be subject and subordinate



to, and any such sublease shall be made expressly subject and subordinate to, all the terms of this Lease and that Lessee's interest in any such sublease shall be fully assignable to Lessor, but only to Lessor, and shall include appropriate provisions for the maintenance of any Boxcar subleased thereby, for insuring the Boxcar subleased against total loss or constructive total loss in amounts and against risks customarily insured against by railroad companies on similar equipment, and for the avoidance of such sublease or use of any Boxcar thereunder if the same would result in the Lessor losing any portion of the investment tax credit or depreciation or amortization deductions referred to in Paragraphs 9.2, 16(k), and 16(1) hereof which would otherwise be available to the Lessor; provided, however, that Lessee shall be allowed to sublease the Boxcars under short term leasing agreements customary in the industry. No sublease of any Boxcar shall in any way discharge or diminish any of Lessee's obligations to Lessor hereunder.

Subject to Paragraph 12, Lessee warrants that the Boxcars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner that will not adversely affect the title of

Lessor to any Boxcar or subject the same to forfeiture or sale or subject Lessor to risk of criminal penalties. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars, the title thereto, or any interest therein or in this Lease, the Purchase Order, and the Assignment, and will keep the Boxcars free and clear of any and all liens, charges, and encumbrances which may be levied against or imposed upon them (other than encumbrances arising from acts of Lessor not contemplated by this Lease, the Purchase Order and the Assignment or any other document executed therewith) and will, if requested by Lessor, obtain and deliver to Lessor concurrently with the delivery and acceptance of the Boxcars a waiver of any such liens or claims as to the Boxcars in recordable form satisfactory to Lessor, provided, that, nothing herein shall prohibit any lien attaching to the leasehold interest of Lessee under this Lease by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property. Lessee will promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time. The Lessee shall use or cause the use of the Boxcars only in the United States, except that the Lessee may from time to time use or cause to be used in Canada any Boxcar or Boxcars, provided, that, during any calendar year the total use of the Boxcars in

Canada shall not exceed, on an aggregate basis, more than 5% of the total aggregate use of the Boxcars in the United States and Canada and, upon the request of the Lessor, the Lessee shall, for any calendar year specified in such request, furnish to the Lessor, within 60 days after the receipt of such request, a certificate setting forth the aggregate use of the Boxcars in Canada compared with the total aggregate use of the Boxcars in the United States and Canada.

12. Maintenance and Improvements.

Lessee shall at all times and at its own expense keep the Boxcars in good and efficient working order, condition and repair, reasonable wear and tear excepted. The title to any alteration, improvement, addition or modification, other than those which may be removed without material damage to the Boxcar shall be and remain in Lessor. The Lessee shall, at its own expense, make or cause to be made all inspections, maintenance and repairs of the Boxcars as may be required by any applicable governmental laws or regulations, or as may be required by the insurance policies pertaining to the Boxcars, or as required for the prudent and safe operation of similar railroad equipment. Except as otherwise provided in this Paragraph, Lessee shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Boxcars in good operating condition throughout the term of this Lease and to comply with the above requirements. Any alterations, improvements, additions

1. The first and largest of these is the "unofficial" or "informal" sector, which is made up of people who work in the underground economy. This sector is often the most profitable, as it is not subject to the same regulations and taxes as the formal sector. It is also the most volatile, as it is often the first to be affected by economic downturns.

1. The first of these is the fact that the Government has not been able to secure the necessary funds to carry out its policy of non-interference in the internal affairs of the Republic of China. This has been due to the fact that the Government has not been able to secure the necessary funds to carry out its policy of non-interference in the internal affairs of the Republic of China.

or modifications which may be removed without material damage to the Boxcars may be removed by Lessee on the termination of this Lease, provided Lessee is not otherwise in default hereunder, and further provided that Lessor shall have the option to purchase the same from Lessee at the then Fair Market Value of such alteration, improvement, addition or modification. Lessee shall give Lessor not less than 90 days' written notice prior to the termination of this Lease of any improvement, alteration, addition or modification which it desires to remove from the Boxcar, together with a statement of its then Fair Market Value, such Fair Market Value being determined as provided in Paragraph 15.1 hereunder.

The Lessee shall immediately give Lessor written notice at any time when any alteration, improvement, addition or modification to the Boxcars, which may not be removed without material damage, is required by any applicable governmental laws or regulations, or is required by the insurance policies pertaining to the Boxcars, or is, in the Lessee's good faith opinion, required for the prudent and safe operation of the Boxcars, and, provided an adjustment in Rent therefor can be agreed upon within ninety (90) days of the receipt by Lessor of such notice, said required alteration, addition, improvement or modification will be paid for by Lessor. If no such agreement can be reached within ninety (90) days of the date Lessee gave Lessor written notice of such requirement, Lessee shall, within fifteen (15) days, purchase all Boxcars covered by such requirement for the higher of the then

Fair Market Value or the Stipulated Loss Value for such Boxcars, whereupon Lessor shall transfer the Boxcars to the Lessee on an "as-is," "where-is" basis without representation or warranty, express or implied except that the Boxcars shall be free of liens or encumbrances resulting from acts of or claims against the Lessor not contemplated by this Lease, the Purchase Order, and the Assignment.

13. Loss and Damage; Payment for Casualty Occurrences.

Lessee shall bear the risk of damage, loss, theft, requisition, condemnation, confiscation or destruction, partial or complete, of any Boxcar, arising from whatever source, whether or not such loss or damage is covered by insurance, except that Lessor agrees to apply toward payment of the obligations of Lessee under this Paragraph insurance proceeds payable to Lessor by reason of such damage, loss, theft or destruction to the extent said proceeds are not utilized to satisfy other obligations of Lessee due and payable hereunder. In the event that during the Term of this Lease, the Purchase Order, and the Assignment, or any renewal thereof, any Boxcar shall become worn out, lost, stolen, destroyed, irreparably damaged or rendered permanently unfit for use, from any cause whatever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the Term of this Lease, Lessee shall promptly and fully notify the Lessor in writing with respect thereto and shall specify the date on which such Casualty

Occurrence took place. On the Interim or Periodic Rent payment date, as the case may be, next succeeding the date of such Casualty Occurrence, the Lessee shall pay to Lessor an amount equal to the Rent with respect to such Boxcar due and payable on such date, plus a sum equal to the Lessor's Cost for such Boxcar multiplied by the percentage set forth in the Stipulated Loss Value Schedule attached hereto as Exhibit A for such Boxcar as of such Rent payment date (such amount being herein called the "Stipulated Loss Value"). For the purposes of the immediately preceding sentence, if any such Casualty Occurrence takes place on a Rent payment date, the immediately succeeding Rent payment date shall be deemed to be the Rent payment date next following the Rent payment date of such Casualty Occurrence. Upon (but not prior to) the payment of the Stipulated Loss Value by the Lessee with respect to any Boxcar, the Rent for such Boxcar as provided for by this Lease shall thereafter cease to accrue, the term of this Lease as to such Boxcar shall terminate, and, except in the case of the loss, theft or complete destruction of such Boxcar, or as otherwise provided in this Paragraph, the Lessor shall be entitled to recover possession of such Boxcar. Except as provided in this Paragraph, the Lessee shall not be released from its obligations under this Lease, the Purchase Order and the Assignment, and shall bear the risk of, any Casualty Occurrence to any Boxcar from and after delivery and acceptance thereof by Lessee.

In the event of a Casualty Occurrence requiring the payment by the Lessee of the Stipulated Loss Value for any Boxcar, the Lessee shall (unless it shall exercise the option provided in this Paragraph), as agent for the Lessor, dispose of the Boxcar as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as-is," "where-is" basis without representation or warranty, express or implied except that the Boxcar shall be free of liens or encumbrances resulting from acts of or claims against the Lessor not contemplated by this Lease, the Purchase Order, and the Assignment. The Lessee may retain all amounts of such price and damages received by the Lessee by reason of such Casualty Occurrence up to the Stipulated Loss Value attributable thereto and shall remit the excess, if any (minus, to the extent it shall not exceed such excess, the Fair Market Value as determined in Paragraph 15.1, of all alterations, improvements, additions or modifications paid for by Lessee which may be removed without material damage to the Boxcar), to the Lessor. The Lessee may, at its option, retain the Boxcar if the Fair Market Value thereof (minus the amount to be deducted under the immediately preceding sentence), shall not exceed the Stipulated Loss Value attributable thereto, or, if such Fair Market Value (minus such amount to be deducted under the immediately preceding sentence) shall exceed the Stipulated Loss Value attributable thereto and the Lessee shall pay to the Lessor the amount of such excess. If the Lessee shall elect to



retain the Boxcar as aforesaid, the Lessor shall transfer the Boxcar to the Lessee on an "as-is," "where-is" basis without representation or warranty, express or implied except that the Boxcar shall be free of liens or encumbrances resulting from acts of or claims against the Lessor not contemplated by this Lease, the Purchase Order, and the Assignment.

If Lessor shall receive any condemnation or requisition payments after Lessee shall have made payments pursuant to this Paragraph without deduction for such condemnation or requisition payments, the Lessor shall pay such condemnation or requisition payments to the Lessee up to an amount equal to the Stipulated Loss Value paid by the Lessee with respect to the Boxcars condemned or requisitioned unless an Event of Default or other event, which with notice, demand and/or lapse of time would constitute such an Event of Default, shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under this Lease, the Purchase Order and the Assignment. The balance of such condemnation payments shall remain the property of the Lessor. Any condemnation payments received with respect to a Boxcar not suffering a Casualty Occurrence shall be the property of the Lessor.

14. Events of Default and Remedies.

14.1 Events of Default. Each of the following shall constitute an Event of Default:

(a) The Lessee's default in the performance of the covenants of Paragraph 5 hereof, or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, the Purchase Order or Assignment, or

(c) The Lessee's default in the payment of any installment of Rent or other amounts due and owing hereunder continuing for more than ten (10) days, or

(d) The Lessee shall fail to carry and maintain insurance on or with respect to any Boxcar required by Paragraph 10 hereof, or

(e) The Lessee shall permit any Boxcar to be operated or used in any manner and for any purpose at a time when insurance required by the provisions of Paragraph 10 shall not be in effect, or

(f) Except as expressly provided in this Paragraph, the Lessee's default in the performance of any covenant contained in this Lease, the Purchase Order, and the Assignment continuing for more than thirty (30) days, or

(g) The Guarantor's default in the performance of any covenant contained in the Guaranty continuing for more than thirty (30) days, or

(h) If any representation or warranty made by Lessee in this Lease, the Purchase Order, or the Assignment or in any statement or certificate furnished by Lessee in

connection with this Lease, the Purchase Order, or the Assignment or the delivery of the Boxcars thereunder or if any representation or warranty made by the Guarantor in the Guaranty proves untrue in any material respect as to the date of the making thereof, and such conditions shall not be made good by Lessee or Guarantor, as the case may be, within thirty (30) days after notice thereof to Lessee or Guarantor, or

(i) A default shall occur under the terms and conditions of any obligation of Lessee or of Guarantor for the payment of borrowed money (with respect to either principal or interest), for the deferred purchase price of property, or for the payment of rent under any lease of land, easements, machinery, equipment or other facilities, and the aggregate total of such obligations in default exceeds \$100,000 at any one time, unless Lessee or Guarantor, as the case may be, promptly contests the same in good faith, or

(j) A decree or order by a court having jurisdiction in the premises shall have been entered and remain in force undischarged and unstayed for sixty (60) days:

(i) Adjudging the Lessee or Guarantor a bankrupt or insolvent,

(ii) Approving as properly filed a petition seeking reorganization of the Lessee or Guarantor under the Bankruptcy Act or any other state or federal law,

(iii) Directing the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of the Lessee or Guarantor or of the property of the Lessee or Guarantor, or

(iv) Directing the winding up or liquidation of the affairs of the Lessee or Guarantor;

(k) The Lessee or Guarantor shall:

(i) Institute proceedings to be adjudged a voluntary bankrupt or insolvent,

(ii) Consent to the filing of a bankruptcy or insolvency proceeding against it,

(iii) File a petition or answer or consent seeking reorganization or readjustment under the Bankruptcy Act or any other state or federal law, or otherwise invoke any law for the aid of debtors, or consent to the filing of any such petition,

(iv) Consent to the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of its property or any substantial portion of its property,

(v) Make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or,

(vi) Take any corporate action in furtherance of any of the aforesaid purposes;

(1) A petition against Lessee or Guarantor in a proceeding under bankruptcy laws or other insolvency laws (as now or hereafter in effect) in any jurisdiction within the United States or elsewhere shall be filed and shall not be withdrawn or dismissed within ninety (90) days thereafter, or if, under the provisions of any law providing for reorganization or winding up of corporations which may apply to Lessee or Guarantor any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or Guarantor or of any substantial part of the property of either of them, and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or untermi-  
nated for a period of ninety (90) days.

14.2 Remedies. The occurrence of any Event of Default shall terminate any obligation on the part of Lessor to purchase or lease any Boxcar not yet purchased by Lessor or accepted by Lessee and, when any Event of Default has occurred and is continuing, Lessor at its option may

(a) Proceed by appropriate court action to enforce performance by Lessee of this Lease, the Purchase Order or Assignment or to recover damages for a breach thereof (and Lessee agrees to bear Lessor's costs and expenses, including legal fees, in securing such enforcement),  
or

(b) By notice in writing to Lessee to terminate the Lease or Lessee's rights of possession of the Boxcars or any combination thereof, whereupon all right, title and interest of Lessee in the Boxcars shall terminate but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may by its agents enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee; but Lessor shall nevertheless have a right to recover from Lessee any and all amounts which under the terms of this Lease, the Purchase Order or Assignment may then be due or which may have accrued to the date of such termination and also to recover forthwith from Lessee (i) as damages for the loss of the bargain and not as a penalty and in lieu of any claim for Rent arising from and after the date of such termination a sum with respect to the Boxcars which represents the excess of (A) the present worth at the date of such termination of all Rents for the Boxcars which would otherwise have accrued hereunder from the date of such termination to the end of the Full Term of the Lease, over (B) the then present worth of the then fair rental value of the Boxcars for such period computed by discounting from the end of such Full Term to the date of such termination rentals which Lessor reasonably estimates to be obtainable for use of the Boxcars during such period, the present worth to be

computed in each case on a basis of 8% per annum discount, from the respective dates upon which Rents would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including legal fees, in addition thereto which Lessor shall have sustained by reason of Lessee's breach of any covenant of the Lease, the Purchase Order or the Assignment, other than for payment of Rent, and such legal and other expenses as shall be expended or incurred in the seizure, storage, rental or sale of the Boxcars or in the enforcement of any right or privilege hereunder, or in any consultation or action in such connection, and (iii) interest on all said amounts from the time due until paid at the lesser of a rate equal to 12% per annum, or the highest rate allowed by law.

The remedies herein provided in favor of Lessor shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in its favor existing in law, in equity or in bankruptcy; provided, however, that the measure of damages recoverable against Lessee shall in any case be calculated in accordance with this Subparagraph (b).

In addition to any other remedy granted herein, if this Lease shall terminate pursuant to Paragraph 14 hereof, the Lessee shall forthwith deliver possession of the Boxcars to the Lessor.

For the purpose of delivering possession of any Boxcar or Boxcars to the Lessor, the Lessee shall at its own cost, expense and risk:

(a) Forthwith place such Boxcars upon such storage tracks as the Lessor reasonably may designate;

(b) Permit the Lessor to store such Boxcars on such storage tracks at the risk of the Lessee until such Boxcars have been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport the same to any place in the United States reasonably requested by the Lessor.

The assembling, delivery, storage and transporting of the Boxcars as herein provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Boxcars. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Boxcar to inspect the same.

15. Lessee's Purchase, Extension, or Redelivery.

15.1 Lessee's Option to Purchase. Provided that this Lease has not been earlier terminated and that no event has



occurred and is continuing which constitutes an Event of Default as defined in this Lease or would constitute such an Event of Default but for the requirement that notice be given or lapse of time or both, the Lessee may, by written notice delivered to the Lessor not less than 90 days prior to the end of the Full Term of this Lease, or any renewal thereof, elect to purchase all, but not less than all, of the Boxcars then subject to the terms and conditions of this Lease, at the end of such Full Term for a purchase price equal to the "Fair Market Value" of the Boxcars as of the end of such Full Term. Fair Market Value shall be determined on the basis of and shall be equal in amount to the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell. If on or before 60 days prior to the expiration of the Lease term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Boxcars, such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser mutually selected by the Lessor and Lessee. The determination so made shall be binding upon both the Lessor and the Lessee. The expenses and fee of the appraiser shall be borne by the Lessee.

15.2 Lessee's Option to Renew. Provided that this Lease has not been earlier terminated and that no event has

occurred and is continuing which constitutes an Event of Default as defined in this Lease or would constitute such an Event of Default but for the requirement that notice be given or lapse of time or both, the Lessee may, by written notice delivered to the Lessor not less than 90 days prior to the end of the Full Term of this Lease, or any renewal thereof, elect to renew the Full Term with respect to the Boxcars then subject to the terms and conditions of this Lease for one year at their "Fair Rental Value", which rental shall be paid semiannually in arrears. Fair Rental Value shall be determined on the basis of and shall be equal to the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease and in making such determination, costs of removal from the location of current use shall not be a deduction from such Value. If on or before 60 days prior to the expiration of the Full Term the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Boxcars, such Value shall be determined in accordance with the foregoing definition by a qualified independent appraiser mutually selected by the Lessor and Lessee. The expense and fee of the appraiser shall be borne by Lessee.

15.3 Redelivery. At the expiration or earlier termination of this Lease or any renewal thereof or upon an Event of Default as specified in Paragraph 14.1 hereof (hereinafter

collectively the "Redelivery Date"), Lessee will surrender possession of the Boxcars to Lessor in good order and repair, ordinary wear and tear excepted, by delivering the same to Lessor at such location and on such tracks as Lessor shall reasonably designate, or if no other such designation be made, at Seattle, Washington. If so requested by Lessor, such Boxcars shall be, at Lessee's expense, suitably prepared for shipment by a common carrier chosen by Lessor. Lessee shall reimburse the Lessor for any expenditure necessary to place the Boxcars in the condition required by this Paragraph upon Redelivery.

For each day elapsed from the Redelivery Date to and including the date upon which any Boxcar is returned pursuant to the provisions of this Paragraph, Lessee agrees to pay to Lessor Holdover Rent at the daily rate (as calculated on a 365 day year) of three percentage points over the best rate of interest charged by Seattle-First National Bank to its largest and most credit-worthy commercial borrowers on 90-day unsecured loans (the "Prime Rate") on the higher of (a) the Stipulated Loss Value for such Boxcar as of the conclusion of the Lease Term, or (b) the Fair Market Value of such Boxcar as determined pursuant to the procedures set out in Paragraph 15.1. All Boxcars returned to Lessor after the Redelivery Date shall be in lots of not less than 15 Boxcars, provided that if fewer than 15 Boxcars remain unreturned, that such unreturned Boxcars shall be returned as a lot.

Lessee will use its best efforts to return all Boxcars to the Lessor as soon as practicable after the end of the Full Term of this Lease; provided, however, that in the event any Boxcar is not returned within ninety (90) days after the Redelivery Date, then the Lessee shall, within fifteen (15) days, purchase such Boxcar from the Lessor for the higher of the then Fair Market Value determined pursuant to the procedures set out in Paragraph 15.1, or the Stipulated Loss Value for such Boxcar, whereupon the Lessor shall transfer the Boxcar to the Lessee on an "as-is," "where-is" basis without representation or warranty, express or implied except that the Boxcar shall be free of liens or encumbrances resulting from acts of or claims against the Lessor not contemplated by this Lease, the Purchase Order, and the Assignment.

The Lessee will not, without the Lessor's prior written consent, cause the Boxcars to be used beyond the Full Term of this Lease except as necessary to have the Boxcars unloaded and redelivered to the Lessor. Any such use to which the Lessor gives consent shall constitute an extension of this Lease terminable by either party on thirty (30) days written notice, unless the parties shall otherwise expressly agree in writing.

16. Representations, Warranties and Covenants of Lessee.

Lessee represents, warrants and covenants that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority,

and is duly qualified and authorized to: (i) perform all transactions, operations, and obligations contemplated by this Lease, the Purchase Order, and the Assignment and any documents required thereunder, (ii) operate and sub-lease the Boxcars in the manner such Boxcars are intended to be operated under this Lease, and (iii) do business in every jurisdiction where the failure to be qualified and authorized would materially affect the financial condition, business, or operations of Lessee.

(b) Lessee has the full power, authority and legal right to execute, deliver and perform the terms of this Lease, the Purchase Order, the Assignment, and all other documents required thereunder, and the Lease, the Purchase Order, and the Assignment, or any other documents required thereunder, have been duly authorized by all necessary corporate action of Lessee and constitute valid and binding obligations of Lessee, enforceable in accordance with their terms.

(c) There is no law and no charter, bylaw or preference share provision of Lessee and no provision in any existing mortgage, indenture, contract or agreement, order, judgment or binding decree which would be contravened by the execution, delivery or performance by Lessee of this Lease, the Purchase Order, and the Assignment, or any documents required thereunder.

(d) There is no mortgage, deed of trust, charter, lease, or any other lien or security interest of any nature whatsoever which now covers or affects any property or interests therein of Lessee which now attaches or hereafter will attach to the Boxcars or in any manner affects or will affect adversely Lessor's right, title and interest therein, provided that this warranty shall not be considered breached by any lien attaching to the leasehold interest of Lessee under this Lease by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property.

(e) No consent of any shareholder, or any trustee or holder of any indebtedness, of Lessee is or will be required as a condition to the validity of this Lease, the Purchase Order, and the Assignment, or any documents required thereunder.

(f) Prior to acceptance of the first delivered Boxcar from the Constructor, this Lease (and any assignment hereof) will have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada, and such filing, recordation and deposit will protect the Lessor's interests in and to the Boxcars and no filing, recording or deposit (or giving of

notice) with any other Canadian, federal, state or local government is necessary in order to protect any interests of the Lessor in and to the Boxcars.

(g) No approval is required by any public regulatory body with respect to the entering into or performance by the Lessee of this Lease, the Purchase Order, or the Assignment, or any documents required thereunder.

(h) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of Lessee.

(i) Neither the execution and delivery of this Lease, the Purchase Order, or the Assignment, or any documents required thereunder, nor fulfillment of, or compliance with, the terms and provisions thereof, will contravene any provision of law now in effect, judgment, decree, order, franchise, or permit applicable to Lessee, or conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a violation of, the charter or bylaws of Lessee or constitute a default under any agreement, instrument, or obligation to which Lessee is now a party, or by which it is bound.

(j) Lessee has filed or caused to be filed all domestic and foreign tax returns which are required to be

filed and has paid or caused to be paid all taxes shown to be due or payable on such returns or (except to the extent being contested in good faith and for the contingent payment of which adequate provisions have been made) on any assessment received by Lessee, to the extent that such taxes have become due and payable.

(k) Ownership of the Boxcars by Lessor at the time of acceptance by Lessee of the same from the Constructor will entitle Lessor to a depreciation or amortization deduction with respect to the full Lessor's Cost of the Boxcars utilizing for the full amount of such Lessor's Cost and ADR depreciation life of twelve (12) years as now provided under the asset depreciation range pursuant to Treas. Regs. § 1.167, and computed in accordance with any of the methods of depreciation now provided by § 167(b) of the Code, and Lessee will take no action during the term of this Lease inconsistent with this warranty.

(1) At the time Lessor becomes the owner of any Boxcar, (i) such Boxcar will constitute "new Section 38 property" as defined in Section 48(b) of the Code, and at the time Lessor becomes the owner of such Boxcar, no portion thereof shall have been used by any person so as to preclude the "original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor, and (ii) at all times during the term of



this Lease, such Boxcar will constitute "Section 38 property" within the meaning of Section 48(a) of the Code, and will not be used predominantly outside the United States within the meaning of said Section 48(a) (including any exception thereto).

(m) At Lessee's acceptance of the same, each Boxcar has an economically useful life of at least nineteen (19) years after the commencement of the Full Term and each Boxcar can reasonably be expected to have a fair market value at the end of the initial Full Term of this Lease of at least 20% of Lessor's Cost of such Boxcar.

(n) Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction which individually or in the aggregate will materially and adversely affect Lessee's financial condition, business or operations or will adversely affect the ability of Lessee to perform its obligations under this Lease, the Purchase Order, or the Assignment, or any documents required thereunder.

(o) To the best of Lessee's knowledge and belief, after reasonable investigation, no document furnished by the Lessee to the Lessor in connection with the transactions contemplated by this Lease, the Purchase Order, or the Assignment contains any untrue statement of a material fact or omits a material fact necessary to make the statements

contained therein not misleading, and there is no fact which the Lessee has not disclosed to the Lessor in writing which materially adversely affects nor, so far as the Lessee can now reasonably foresee, will materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Lease, the Purchase Order, or the Assignment.

(p) Upon payment of the Lessor's Cost for each Boxcar to the Constructor, Lessor will have good title to the whole of such Boxcar, free and clear of all liens, mortgages, pledges, charges, encumbrances, or other security interests or claims except for such liens or claims as are expressly permitted by this Lease.

17. Interest on Overdue Rentals, Damages and Other Obligations.

Anything to the contrary herein contained notwithstanding, any nonpayment of Rent (whether Interim, Periodic, or Supplemental), damages, or other obligations due hereunder shall result in the obligation on the part of Lessee promptly to also pay interest to Lessor at the lesser of a rate equal to 12% per annum or the highest rate allowable by law, on the overdue rentals, damages or other obligations for the period of time during which they are outstanding.

18. Federal Income Taxes.

It is the intent of the parties hereto that the Lessor shall at all times be considered the owner of the Boxcars which are the subject of this Lease, the Purchase Order, and the Assignment. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to facilitate the accomplishment of this intent. Lessee specifically covenants that it will not use any Boxcar in a manner or at a location or otherwise engage in any activity which may limit the Lessor's privilege to use or secure the benefits of any of the tax benefits indemnified against in Section 9.2 hereof with respect to any Boxcar.

19. Information.

19.1 Inspection and Reports. Lessor shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations herein. Lessee shall immediately notify Lessor in writing of any action connected with the malfunctioning or operation of any Boxcar including in such report the time, place and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessor's investigation of the

accident. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Boxcar.

19.2 Financial Information. Lessee shall provide Lessor (at the address noted in Paragraph 21.2) with the following financial reports:

(a) As soon as available, and in any event within one hundred twenty (120) days after the end of each fiscal year of Lessee, a copy of Lessee's balance sheet as of the end of such fiscal year and the related statements of income and retained earnings for such fiscal year, certified by independent public accountants, all in reasonable detail and setting forth in comparative form the corresponding figures for the preceding fiscal year; and

(b) As soon as available, and in any event within one hundred twenty (120) days after the end of each fiscal year of Guarantor, a copy of Guarantor's consolidated balance sheet as of the end of such fiscal year and the related consolidated statements of income and retained earnings for such fiscal year, certified by independent public accountants, all in reasonable detail and setting forth in comparative form the corresponding figures for the preceding fiscal year; and

(c) Promptly after the same are available, copies of Guarantor's Form 10-K as filed with the Securities and

Exchange Commission and Guarantor's annual report to stockholders; and

(d) As soon as available, and in any event within ninety (90) days after the end of each of the first three fiscal quarters during any fiscal year of Lessee, a balance sheet of Lessee and the related statements of income to the end of the accounting period ending with the end of such fiscal quarter, all in reasonable detail and setting forth in comparative form the corresponding figures for the comparable period one year prior thereto; and

(e) As soon as available, and in any event within ninety (90) days after the end of each of the first three fiscal quarters during any fiscal year of Guarantor, a consolidated balance sheet of Guarantor and the related consolidated statements of income to the end of the accounting period ending with the end of such fiscal quarter, all in reasonable detail and setting forth in comparative form the corresponding figures for the comparable periods one year prior thereto.

19.3 Boxcar Reports. On or before August 1 in each year, commencing with the year 1977, the Lessee will furnish to the Lessor an accurate written statement (a) setting forth as of the preceding June 30 the amount, description, numbers, and name and address of the present sublessee, and, as soon as practicable, the location of all Boxcars then leased hereunder and covered by

the Lease, the amount, description and numbers of all Boxcars that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding year and such other information regarding the condition and state of repair of the Boxcars as the Lessor may reasonably request and (b) stating that, in the case of all Boxcars repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 7.1 have been preserved or replaced. The Lessor shall have the right by its agents to inspect the Boxcars and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

20. Recording.

The Lessee, at its sole expense, shall cause this Lease, and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and the same to be duly deposited with the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada with notice of such deposit having been published in the Canada Gazette (or provision having been made therefor) in accordance with said Section 86. To the satisfaction of Lessor and its counsel, the Lessee will undertake the filing, registering, deposit, and recording required of the Lessee under this Lease and will, from time to time, do

and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection of the Lessor's interests in the Boxcars, or for the purpose of carrying out the intention of this Lease, the Purchase Order, or Assignment, or any assignment thereof; and the Lessee will promptly furnish to Lessor evidences of all such filing, registering, depositing or recording, and with respect thereto, an opinion or opinions of counsel for the Lessee satisfactory to the Lessor and its counsel. This Lease shall be filed and recorded with the Interstate Commerce Commission and deposit made with the office of the Registrar General prior to the delivery and acceptance hereunder of any Boxcar.

21. Miscellaneous.

21.1 Nonwaiver. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgency by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The exercise of any right, power or remedy shall in no event constitute a cure or waiver of any default under this Lease, the Purchase Order, or the Assignment nor prejudice the Lessor in the

exercise of any rights thereunder unless in the exercise of such right all obligations of Lessee under this Lease, the Purchase Order, and the Assignment are fully performed.

21.2 Notices. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to Lessor at P.O. Box 3586, Seattle, Washington 98124, and to Lessee at Two Embarcadero Center, San Francisco, California 94111, Attn: President, or to such other address as either party may from time to time specify in writing to the other.

21.3 Governing Law. This Lease, the Purchase Order, and the Assignment shall be governed by and construed according to the laws of the United States of America and the State of Washington.

21.4 Successors and Assigns. This Lease, the Purchase Order and the Assignment, shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee will not, without the prior written consent of Lessor, assign this Lease, the Purchase Order, or the Assignment, or any documents required thereunder, or any of its rights thereunder or sublease the Boxcars to any party except as otherwise permitted in Paragraph 11 of the Lease, and any purported assignment or sublease in violation hereof shall be void; provided, however, that Lessor's consent shall



IN WITNESS WHEREOF, the parties have executed this Lease as  
of the day and year first above written.

BY [Signature]  
Its Asst Vice President

By [Signature]  
Its [Signature]

On this 18<sup>th</sup> day of February, 1976, before me, a notary public in and for the State of Washington, personally appeared Michael E. Taft, to me known to be the Asst. Vice President of SEATTLE-FIRST NATIONAL BANK, the national banking association that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said association, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed thereto, if any, is the seal of said association.

Bruce C Dices  
Notary Public in and for the State  
of Washington residing at Seattle.

STATE OF CALIFORNIA        )  
                                  ) SS.  
CITY AND COUNTY OF SAN     )  
FRANCISCO                    )

On this 18<sup>th</sup> day of February, 1976, before me, a notary public in and for the State of California, personally appeared William J. Texido, to me personally known, who, being by me duly sworn, says that he is a President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said company, that said instrument was signed and sealed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Terri J. Stubblefield  
Notary Public in and for the State  
of California residing at San Francisco

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ANNEX A TO LEASE

<u>Type</u>	<u>Constructing Plant</u>	<u>Quantity</u>	<u>Road Numbers</u>
70-Ton 5'6" Single sheath Boxcars with Nailable steel floor, single 10' sliding door and freightmaster 10" end of car cushioning, Type "ME"	FMC Corporation, Portland, Oregon	100	GMRC 600-649 VTR 4000-4049